

# Justice Gives Up Fight On 'Secrets' as Evidence

By Fred Barnes  
Star-News Staff Writer

The Justice Department, under new management, has given up its fight to give the government broad authority to withhold "state secrets" and "official information" in federal trials.

Deputy Atty. Gen. William D. Ruckelshaus quietly notified a House Judiciary subcommittee two weeks that the department will go along with the panel's decision to strip all such special privileges from the new rules of evidence for federal courts.

The new rules, now under consideration in both the House and Senate, are designed to govern the admissibility of evidence in all civil and criminal trials in the nation's federal court system.

**THE ACTION** by Ruckelshaus represents a significant shift in the Justice Department's position since Elliot L. Richardson took over as attorney general in May from Richard G. Kleindienst.

While he was deputy attorney general and then

attorney general, Kleindienst fought vigorously to have the state secrets, official information and other privileges included in the rules.

The code was drafted by a committee of the U.S. Judicial Conference, the policy-making arm of the federal judiciary. The first version was published in 1969 and contained the state secrets privilege.

This would give the government the right to bar from use in federal court any evidence involving "the national defense or the international relations of the U.S.," whether or not that evidence contains classified material.

But the official information privilege — which would allow the government to block from use anything dealing with policy decisions, investigations or matters exempted from disclosure under the Freedom of Information Act — was left out.

**AFTER** Kleindienst complained, that privilege was inserted in the third version of the evidence code, which was sent to the Supreme

Court in 1971. The justices promulgated the new code last November.

The rules were scheduled to go into effect automatically on July 1, but they were met with stiff opposition and with calls for Congress to alter them, particularly the parts providing special privileges for the government.

The Justice Department under Kleindienst urged Congress to let the code go into effect on schedule, with the state secrets and official information privileges intact. However, Congress decided that it should rewrite the rules at its leisure.

**LAST JUNE**, the House panel voted to abandon all the privileges which had been included in the rules to give anyone a specific right to refuse to testify or divulge information in federal court.

Instead, the subcommittee left federal judges with considerable discretion in deciding claims of a privilege. The judges should simply follow "the principles of the common law as they may be interpreted by the courts of the U.S. in the light of reason and experience."

In the comments submitted by Ruckelshaus, the department said that the subcommittee's decision to abandon specific privileges was prompted by considerations "both numerous and understandable."

**THE DEPARTMENT** asserted that the privileges it had proposed "strike a proper balance between the needs of law enforcement and the interests of the accused."

But it said that "in light of the subcommittee's action in dispensing with the privileges altogether, the department takes no position on the propriety of deleting these sections from the code."

Justice made recommendations for changes in other parts of the evidence code,

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Justice made recommendations for changes in other parts of the evidence code, but none involved a matter as important as the privileges.